

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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STEPHANIE GILMORE, DARRYL GILMORE,

Plaintiffs,

-against-

TROY HOUSING AUTHORITY, JOHN DOE U.S.
MARSHALS, NYPD, U.S. MARSHAL MIKE WARNER,
TROY HOUSING AUTHORITY OFFICER
MCLAUGHLIN,

Defendant.

**ANSWER TO CO-
DEFENDANT TROY
HOUSING AUTHORITY
OFFICER MCLAUGHLIN'S
CROSS CLAIMS ON
BEHALF OF DEFENDANT
CITY OF NEW YORK**

16-CV-1048 (DNH) (DJS)

Jury Trial Demanded

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Defendant New York City Police Department ("NYPD")¹, by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for its answer to the cross-claims of co-defendant Troy Housing Authority Officer McLaughlin, respectfully alleges, upon information and belief, as follows:

1. Defendant City of New York repeats and realleges each and every paragraph of its answer to plaintiffs' Complaint, dated February 3, 2017, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Denies the allegations set forth in paragraph "32" of defendant Troy Housing Authority Officer McLaughlin's Answer to the Complaint.

¹ The New York City Police Department ("NYPD") is a non-suable entity. See N.Y. City Charter ch. 17, § 396 ("[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law."); see also Jenkins v. City of New York, 478 F.3d 76, 93 (2d Cir. 2007) ("The district court correctly noted that the NYPD is a non-suable agency of the City.").

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

3. The cross-claims fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

4. The cross-claims may be barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

5. Co-defendant McLaughlin's cross-claims against defendant City of New York are not ripe for adjudication.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

6. Defendant City of New York has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

7. Any injury alleged to have been sustained resulted from plaintiffs' and/or co-defendant McLaughlin's and/or the Troy Housing Authority's culpable or negligent conduct and/or the culpable or negligent conduct of others and was not the proximate result of any act of defendant City of New York.

WHEREFORE, defendant City of New York requests judgment dismissing the cross-claims of defendant McLaughlin in their entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 1, 2017

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendant City of New York
100 Church Street, Room 3-308A
New York, New York 10007
(212) 356-5056

By: /s/
Erin Ryan
Assistant Corporation Counsel
Special Federal Litigation

cc: Stephanie Gilmore (By First Class Mail)
Plaintiff Pro Se
612 Griswald Heights
Troy, New York 12180

Darryl Gilmore (By First Class Mail)
Plaintiff Pro Se
612 Griswald Heights
Troy, New York 12180

John W. Liguori (By ECF)
Attorney for defendants Troy Housing Authority, McLaughlin
Towne, Ryan Law Firm – Albany Office
450 New Karner Road
P.O. Box 15072
Albany, New York 12205

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AUTHORITY OFFICER MCLAUGHLIN'S CROSS-
CLAIMS ON BEHALF OF DEFENDANT CITY OF
NEW YORK**

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendant City of New York
100 Church Street
New York, New York 10007

Of Counsel: Erin Ryan
Tel: (212) 356-5056

Due and timely service is hereby admitted.

New York, N.Y., 2017

..... Esq.

Attorney for